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OGC HAS REVIEWED.

GENERAL COUNSEL'S OPINION NUMBER 54-7, DATED 17 MAY 1954

Annual leave may be adjusted retroactively to leave without pay.

TO DEPUTY CHIEF, FINANCE DIVISION

1. Memoranda from EE/Admin and DD/P-Admin have questioned whether or not annual leave which has already been taken as annual leave may be converted into leave without pay at some subsequent date.

2. There is no clear-cut statutory definition or discussion of leave without pay. The conception of LWOP has become a part of Government administration through custom and usage. The Civil Service Commission and the Federal Personnel Council have considered this subject, and the Federal Personnel Manual, on Page 11-9, provides "the authorization of leave without pay is a matter of administrative discretion." Further, the Federal Personnel Manual furnishes a set of standards with reference to which the administrative discretion should be exercised. Those standards are described by the manual as being nonregulatory in character and not mandatory. The manual provides in part as follows:

"Each request for leave without pay should be examined closely to assure that the value to the Government or the serious needs of the employee are sufficient to offset the costs and administrative inconveniences to the Government which result from the retention of an employee in a leave-without-pay status."

3. No statute has been found which prohibits the retroactive adjustment of annual leave taken by an employee to leave without pay provided the appropriate refunds are made.

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absence of any statutory or regulatory provisions prohibiting retroactive conversion of leave, this office sees no legal objection to such action as was taken.

4. The previous opinion of this office, dated 22 March 1954, pointed out such regulations and laws as seemed to bear on the problem. That opinion went further to indicate that the policy proscribing retroactive conversions appeared to be a sound one in view of all of the factors concerned. However, we should like to make it clear that the determination to approve retroactive conversions is an administrative

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one to which this office can interpose no legal objection in the absence of an Agency policy expressed in regulations limiting such administrative discretion.

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LAWRENCE R. HOUSTON
General Counsel

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